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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2061

MICHAEL BRIAN MILLER
79570 Port Royal Avenue
Bermuda Dunes, CA 92203

A C C U S A T I O N

Respiratory Care Practitioner
License No. 20529

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.
2. On or about December 17, 1998, the Respiratory Care Board issued Respiratory Care Practitioner License Number 20529 to MICHAEL BRIAN MILLER (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2008, unless renewed.

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4. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3750 of the Code states, in pertinent part:

“ . . .

“ . . .

“ . . .

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within

1 the meaning of this article. The board shall order the license suspended or revoked, or
2 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section
5 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
6 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
7 accusation, information, or indictment.”

8 8. California Code of Regulations (“CCR”), title 16, section 1399.370, states:

9 “For the purposes of denial, suspension, or revocation of a license, a crime or act
10 shall be considered to be substantially related to the qualifications, functions or duties of
11 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
12 perform the functions authorized by his or her license or in a manner inconsistent with the
13 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
14 those involving the following:

15 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
16 abetting the violation of or conspiring to violate any provision or term of the Act.

17 “. . .

18 “(c) Conviction of a crime involving driving under the influence or reckless
19 driving while under the influence.

20 “. . .”

21 COST RECOVERY

22 9. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

23 "In any order issued in resolution of a disciplinary proceeding before the board,
24 the board or the administrative law judge may direct any practitioner or applicant found to have
25 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

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1 10. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees."

5 11. Section 3753.1 of the Code states, in pertinent part:

6 "(a) An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation. . . ."

9 FIRST CAUSE FOR DISCIPLINE

10 (Conviction of a Crime)

11 12. Respondent is subject to disciplinary action under Code section 3750(d),
12 3750(g), 3752, and CCR, title 16, section 1399.370(a) and (c), in that he was convicted of a
13 crime substantially related to the qualifications, functions, or duties of a respiratory care
14 practitioner. The circumstances are as follows:

15 A. On or about October 2, 2006, in the case entitled *The*
16 *People of the State of California v. Michael Brian Miller*, Case No. TRE038619,
17 before the Superior Court of California, County of San Bernardino District,
18 Respondent was convicted, on his nolo contendere plea, of one count of driving
19 under the influence with 0.08% or higher blood alcohol, in violation of Vehicle
20 Code section 23152(b).

21 B. The circumstances of the conviction are as follows: On or
22 about December 25, 2005, Respondent rear-ended another vehicle. San
23 Bernardino County Sheriff's Officer W.B (Officer W.B.) responded to the scene
24 of the accident. In the course of his investigation, Officer W.B. smelled a strong
25 odor of alcohol on Respondent's person and upon inquiry, Respondent admitted to
26 Officer W.B. he had been drinking beer. Respondent submitted to a Pre-Alcohol
27 Screen (PAS) and the result was .142. Subsequently, two breath tests were
28 administered with results of .14 and .14. Respondent was subsequently arrested.

1 C. On or about January 3, 2006, a Complaint was filed in
2 Superior Court of California, County of San Bernardino, charging Respondent
3 with one count of driving under the influence, in violation of Vehicle Code
4 section 23152(a) and one count of driving under the influence with 0.08% or
5 higher blood alcohol, in violation of Vehicle Code section 23152(b).

6 SECOND CAUSE FOR DISCIPLINE

7 (Conviction of a Crime Involving Driving Under the Influence)

8 13. Respondent is further subject to disciplinary action under CCR, title 16,
9 sections 1399.370(a) and (c), in that he was convicted of a crime involving driving under the
10 influence, as more particularly described in paragraph 12, above, which is incorporated by
11 reference as if fully set forth herein.

12 AGGRAVATING CIRCUMSTANCES

13 14. On or about May 20, 2000, Respondent was arrested for violating Harbors
14 and Navigations (H&N) Code section 655(b) [operating a water craft under the influence of
15 alcohol or drugs] and H&N Code section 655(c) [operating a water craft with 0.08% or more, by
16 weight, of alcohol in his blood]. On or about November 13, 2000, upon his own guilty plea,
17 Respondent was convicted of the amended charge of operating a water craft recklessly in
18 violation of H&N Code section 655(a).

19 PRAYER

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

22 1. Revoking or suspending Respiratory Care Practitioner License Number
23 20529, issued to MICHAEL BRIAN MILLER;

24 2. Ordering Michael Brian Miller to pay the Respiratory Care Board the costs
25 of the investigation and enforcement of this case, and if placed on probation, the costs of
26 probation monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: March 21, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant